

STATE OF MICHIGAN
BEFORE THE MICHIGAN SUPREME COURT

COMPLAINT AGAINST:

Hon. Steven R. Servaas
63rd District Court
105 Maple Street
Rockford, MI 49341

Docket No. 135650

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**Brief in Opposition to the Judicial Tenure Commission's
Petition for Interim Suspension**

Table of Contents

| | <u>Page</u> |
|---|-------------|
| Table of Authorities | ii |
| Introduction..... | 1 |
| Standard of Review | 2 |
| Law and Argument | 3 |
| A. Judge Servaas satisfies MCL 600.8201 because he is a registered elector of the district and election division in which he holds office. | 3 |
| B. Failing to satisfy MCL 600.8201 does not cause an office to be vacated. | 4 |
| C. Judge Servaas has not vacated his office under the Michigan Constitution. | 5 |
| D. Judge Servaas has not vacated his office under any other statutes. | 6 |
| E. The residency issue is moot because Judge Servaas has made a home in the First Division his primary residence, and none of his conduct to date warrants discipline. | 7 |
| Conclusion | 9 |

Table of Authorities

Page

Cases

| | |
|--|---|
| <i>In re Laster</i> , 404 Mich 449 (1979)..... | 3 |
| <i>In re Loyd</i> , 424 Mich 514 (1986)..... | 2 |
| <i>In re Noecker</i> , 472 Mich 1 (2005) | 2 |
| <i>In re Seitz</i> , 441 Mich 590 (1993) | 2 |

Statutes

| | |
|-----------------------|------------|
| MCL 168.409j..... | 6 |
| MCL 168.422..... | 6 |
| MCL 201.3..... | 3 |
| MCL 257.315(1) | 8 |
| MCL 41.57..... | 1, 3 |
| MCL 600.8102..... | 4, 5 |
| MCL 600.8130(4) | 5 |
| MCL 600.8201 | 3, 4, 6, 7 |

Rules

| | |
|--------------------|---|
| MCR 9.219(A)..... | 2 |
| MCR 9.219(B) | 3 |

Introduction

It is clear that the Judicial Tenure Commission first decided the goal it wanted to reach with regard to Judge Servaas, and then tried to find a way to get there. The Commission wants Judge Servaas off the bench and is desperately searching for a reason to justify his removal. Therefore, it has seized upon rather innocuous conduct and keeps trying to find legal authority for the proposition that this conduct is wrongful.

In its first Petition for Interim Suspension, dated January 17, 2008, the Commission premised its argument—that Judge Servaas had vacated his judicial office by living in the wrong *division* of the 63rd District—on language of MCL 41.57 that was amended out of the statute 25 years ago. Now, after being exposed for basing its position on bad law, the Commission grasps at other statutory provisions and the Michigan Constitution to support its untenable claim that Judge Servaas has vacated his judicial position simply by using his home in the Second Division of the 63rd District, instead of his home in the First Division of the same district, as his primary residence. These newly-cited authorities are similarly unavailing.

At the worst, Judge Servaas has committed the “offense” of either living in the wrong home or inadvertently being registered to vote in the wrong district. The position that he has “vacated his office” through this alleged oversight is unsupported by both the facts and the law. Further, his conduct, which may amount to a civil infraction at the worst, is no reason for discipline and certainly no reason for removal from the bench. It could have been remedied through a phone call from the Commission explaining the conduct complained of and the Commission’s interpretation of the law regarding that conduct. And because Judge Servaas’ alleged oversight is not something that will diminish the integrity of the judiciary or expose the public to judicial corruption, there is no reason to suspend Judge Servaas from judicial service pending the outcome of the formal Complaint.

Standard of Review

Petitions for interim suspension of a judge are governed by MCR 9.219(A), which states:

(1) After a complaint is filed, the commission may petition the Supreme Court for an order suspending a judge from acting as a judge until final adjudication of the complaint.

(2) In extraordinary circumstances, the commission may petition the Supreme Court for an order suspending a judge from acting as a judge in response to a request for investigation, pending a decision by the commission regarding the filing of a complaint. In such a circumstance, the documents filed with the Court must be kept under seal unless the petition is granted.

Because a complaint has now been filed, subsection (A)(1) governs. While subsection (A)(2) requires “extraordinary circumstances” for interim suspension of a judge before a complaint is filed, neither subsection (A)(1) nor case law on the subject requires extraordinary circumstances or describes the standard for imposing an interim suspension *after* a complaint is filed. However, Supreme Court precedent on the proper form of discipline once judicial misconduct has been established focuses on the goal of protecting the public and maintaining the integrity of the judiciary rather than on punishing the judge.

For example, in *In re Noecker*, this Court stated that its primary goal in disciplinary proceedings is to “restore and maintain the dignity and impartiality of the judiciary and to protect the public.” 472 Mich 1, 12-13 (2005). Similarly, the Court has stated that the purpose of judicial discipline is not to punish the judge or to exact a civil remedy, but rather, to maintain the integrity of the judicial process and to protect the people from corruption and abuse on the part of those who wield judicial power. *In re Seitz*, 441 Mich 590, 624 (1993). See also *In re Loyd*, 424 Mich 514, 521-522 (1986) (calling the need for a reputable judiciary and the maintenance of the public’s confidence in it “of utmost importance”); *In re Laster*, 404 Mich

449, 462-463 (1979) (expressing the need to provide the public with a “strong, independent, and honest judiciary” that could not allow the appearance of favoritism, cronyism, and judge-shopping to exist).

On February 1, 2008, before the formal complaint was filed, this Court denied the Commission’s first Petition for Interim Suspension. While the standard of review applicable to this second Petition does not require proof of “extraordinary circumstances” in order for the Petition to be granted, the result should be the same. Immediate suspension is not “necessary for the proper administration of justice.” See MCR 9.219(B). Neither the fact that Judge Servaas considered his home in the Second Division to be his primary residence rather than his home in the First Division, nor the fact that Judge Servaas’ home in the First Division was listed on his driver’s license and voter’s registration, will harm the public or erode its perception of the judiciary’s integrity. Interim suspension, therefore, would be merely punitive, and contrary to the purpose of disciplinary proceedings as expressed by this Court.

Law and Argument

A. Judge Servaas satisfies MCL 600.8201 because he is a registered elector of the district and election division in which he holds office.

The Commission has correctly withdrawn its reliance on MCL 41.57 and MCL 201.3, and now clings to MCL 600.8201 as the basis for its complaint. However, this statute gets it no closer to reaching its goal. MCL 600.8201 states in its entirety:

A candidate for and a judge of the district court shall be licensed to practice law in this state and shall be a registered elector of the district and election division in which he seeks and holds office. Except in any district or election division in which there is a vacancy and in which a registered elector qualified to practice law in this state has not filed nominating petitions by the filing deadline for the primary election, a registered elector of an adjoining district or election division within the district who is qualified to practice law in this state shall be eligible for the office of district judge by filing nominating petitions signed by

the required number of qualified electors of the district or election division in which he seeks election within 5 days after such deadline. (emphasis added.)

Judge Servaas has always met the requirements of MCL 600.8201, because during his entire career on the bench, he has always been licensed to practice law in this state and he has always been a registered elector of the 63rd District and First Division—the district and election division in which he holds office.

B. Failing to satisfy MCL 600.8201 does not cause an office to be vacated.

Assuming, *arguendo*, that he has been *improperly* registered as an elector of the First Division because his primary residence has been in the Second Division, MCL 600.8201 does *not* say that he has vacated his office. In fact, the second sentence of MCL 600.8201, quoted above, provides that a judicial candidate from another election division—and even from *another district altogether*—is qualified to be a judge for a district in which he does not reside if he simply files the required nominating petitions signed by electors within the district. This undermines the Commission’s position that a district court judgeship is automatically vacant if the judge lives outside the district and that any subsequent judicial acts are “void ab initio”—indeed, the Legislature contemplated that this might occur.

Further, MCL 600.8102 states in its entirety that “the provisions for election divisions of a judicial district have no effect on the administration of a judicial district.” Therefore, even if, based on his primary residence having been in the Second Division, Judge Servaas should have been a registered elector in the Second Division rather than in the First Division, it has no effect on his holding of office. It is simply a situation that can be easily corrected.

C. Judge Servaas has not vacated his office under the Michigan Constitution.

The Commission's belated reliance on the Michigan Constitution does not support its claim either. The Michigan Constitution provides that a judge vacates his office when he removes his domicile "beyond the limits of the territory from which he was elected or appointed." Art. 6, sec. 20. The Commission focuses on the definition of "domicile" while ignoring the phrase "territory from which he was elected."

The territory from which Judge Servaas was elected is the 63rd District. There is no such thing as a "63-1 District" or a "63-2 District." There is simply the 63rd District, which is one district with two divisions. MCL 600.8130(4). The fact that it has two divisions does not make it two districts. See MCL 600.8102 ("The provisions for election divisions of a judicial district have no effect on the administration of a judicial district"). Judge Servaas has never moved his domicile beyond the limits of the territory of the 63rd District. He has maintained a home in the First Division of the 63rd District at all times during his 35 years on the bench. And when his primary residence has been in the Second Division of the 63rd District (with a secondary home in the First Division), that home in the Second Division still constitutes a "domicile" within the 63rd District—the "territory from which he was elected."

Further evidencing the fact that the "territory from which [Judge Servaas] is elected" is the entire 63rd District, and not a particular division of that district, is the fact that Kent County is in the process of building a single new courthouse for the 63rd District. This courthouse, as currently contemplated, will consolidate the two existing courthouses into a single building. It will house both the First Division and the Second Division of the 63rd District Court. However, it will be located in Grand Rapids Township, which is in the Second Division, rather than in the First Division.

D. Judge Servaas has not vacated his office under any other statutes.

Just as Judge Servaas has not vacated his office under MCL 600.8201 or the Michigan Constitution, he has not vacated his office under any other statutes. The Legislature has enacted several statutes stating that judges of the Court of Appeals, Circuit Court, and Probate Court vacate their seats if they move out of their district, but it has not enacted a similar statute regarding district court judges.

With regard to Court of Appeals judges, MCL 168.409j states, “The office of judge of the court of appeals shall become vacant upon the happening of any of the following events before the expiration of the term of office: . . .his ceasing to have his domicile in the district from which he was elected; . . .” Similarly, as to circuit court judges, MCL 168.422 states, “The office of circuit court judge shall become vacant upon the happening of any of the following events before the expiration of the term of office: . . . his ceasing to be an inhabitant of the circuit for which he shall have been elected or appointed or within which the duties of his office are required to be discharged; . . .” Probate judges face the same requirement, as MCL 168.422 states, “The office of probate judge shall become vacant upon the happening of any of the following events before the expiration of the term of office: . . .his ceasing to be an inhabitant of the county for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged; . . .”

However, conspicuously absent from the statutes governing district court judges is language indicating that the office is vacated if the judge moves outside his district. Certainly, if the legislature wanted to impose this requirement, it knew how to do so. But presumably, it recognized that it may be difficult to keep district court judgeships filled if a vacancy were created every time a judge moved outside of the district. As a result, Judge Servaas, who the

Commission only alleges moved out of the *division*, not out of the actual district, has not vacated his judicial position.

E. The residency issue is moot because Judge Servaas has made a home in the First Division his primary residence, and none of his conduct to date warrants discipline.

In any event, the residency issue is moot. As part of an investment portfolio, and consistent with his interest in remodeling and renovating homes, Judge Servaas owns several properties, including those in the First and Second Divisions of the 63rd District, as well as properties outside Michigan. Judge Servaas has moved his primary residence from Honey Creek Avenue in Ada Township back to Rockford in the First Division of the 63rd District and has changed his driver's license and voter's registration to reflect this move (**Exhibit A**). He has also rescinded his Homestead Principal Residence Exemption for his home on Honey Creek Avenue in the Second Division (**Exhibit B**). Therefore, his primary residence is in the First Division of the 63rd District Court, consistent with his driver's license and voter's registration, and there can be no doubt that he is a proper "registered elector of the district and election division in which he seeks and holds office." MCL 600.8201.

But none of his conduct to date warrants discipline, and, at the very least, Judge Servaas should be allowed to continue serving as a judge between now and the resolution of the Commission's formal complaint.

Clearly, Judge Servaas had no intent to deceive the Commission or the public about the location of his two homes. His home in the Second Division is listed in the phone book for the world to see, and if he meant to hide the fact that it was his primary residence, he would not have signed the Homestead Affidavit stating that it was. There is nothing inaccurate about the 2004 voter's application attached as Exhibit 3 to the Commission's petition. In 2004, when Judge Servaas completed his voter's application for the First Division, his primary

residence was, in fact, in the First Division. He listed the court address as his mailing address because he prefers to receive mail there, not because the home address he listed (where he actually lived at the time) was a “sham address” as the Commission asserts. And, according to MCL 257.315(1), a person may submit to the Secretary of State a mailing address that is different from his or her residence address. Similarly, there was nothing wrong with using the court address as his mailing address on his driver’s license application. The face of the license clearly listed his home address in the First Division, which was his primary residence in April 2005 when he completed the application.

At the worst, Judge Servaas may have erred by making his home in the Second Division his primary residence rather than his home in the First Division and by neglecting to change his voter’s registration and driver’s license information to that address. But these are not criminal or fraudulent acts, nor do they constitute judicial misconduct, grounds for discipline, or grounds for removal from the bench. Likewise, a civil infraction, if one occurred, is not judicial misconduct, grounds for discipline, or grounds for removal from the bench. If the Commission had been genuinely concerned about Judge Servaas complying with election law requirements rather than looking for a reason to remove him from the bench, it could have easily corrected the Judge’s oversight through a phone call and an explanation of its interpretation of the relevant law, rather than through these unwarranted and unnecessary disciplinary proceedings.

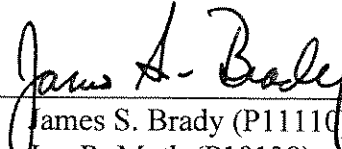
Conclusion

The Commission has not shown any misconduct, and certainly has not demonstrated facts or law that would justify the harsh impact of interim suspension. Therefore, this Court should deny the Commission's Petition and allow Judge Servaas to continue his judicial service pending the results of the Commission's formal complaint.

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Dated: February 27, 2008

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